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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,868	02/26/2002	Gregg S. Sutton	CRD-0991	1377
27777	7590	08/15/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			THALER, MICHAEL H .	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,868

Applicant(s)

SUTTON ET AL.

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 1, 2005 has been entered.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaganov et al. (5,876,367) in view of Gilson et al. (6,726,701) and Engelson et al. (5,423,849). Kaganov et al., in figure 2, disclose housing 10 having a proximal end (the right end) comprising a connector (the proximal balloon 35 shown in figure 6 and which is disclosed as being included in the figure 2 embodiment in col. 10, lines 40-44) adapted to connect to a hose (i.e. the blood vessel. Alternatively, balloon 35 is inherently capable of being connected to a man-made hose either inside or outside the blood vessel. The hose could be outside the blood vessel since the proximal ends of both tubular members 10 and 14 could be located outside the blood vessel while the distal end of the shunt is inside the blood vessel) and a distal end comprising a distal member (the left branch of housing 10) having two openings 13, 18, wherein the housing comprises a

Art Unit: 3731

first lumen 11 and a second lumen 15 extending from a port 16 to an opening 18 and vascular filter system 41, 42 comprising a filter membrane support structure (e.g. the umbrella frame described in col. 9, lines 64-67) and a filter membrane having openings and having fibers extending therefrom (the threads which make up the filter, noting the term "thread" in col. 8, line 1 and that threads, by definition, include fibers and noting that these fibers extend from the openings in a direction away from the openings). Kaganov et al. fail to disclose the openings as having variable diameters with respect to each other. However, Gilson et al. teach that the diameters of the openings for a blood filter vary with respect to each other (noting the term "average" in the phrase "average diameter" in col. 12, line 40 which indicates varying diameters). This arrangement has the apparent advantage of permitting easy manufacture of the openings by not requiring them to be perfectly identical in size, thus permitting a wide tolerance of the size. It would have been obvious to permit the Kaganov et al. openings to have variable diameters with respect to each other so that it too would have this advantage. Kaganov et al. fail to disclose one or more fibers attached to the filter membrane adjacent to the circumference of the holes. However, Engelson et al. teach that fibers (144 or 152) should be

Art Unit: 3731

attached to a porous material in order to better capture and blood clots. It would have been obvious to attach fibers to the Kaganov et al. filter so that it too would have this advantage. The Kaganov et al. system is inherently capable of being used as a cardiopulmonary bypass filter system. As to claim 2, the Kaganov et al. system is inherently capable of being connected to a cardiopulmonary bypass machine by for example, connecting the right end of tube 10 to it via a hose. As to claims 3 and 4, Kaganov et al. disclose distal flange (the distal balloon 35 shown in figure 6 and which is disclosed as being included in the figure 2 embodiment in col. 10, lines 40-44). As to claim 7, Kaganov et al. fail to disclose the openings being non-uniformly spaced. However, Gilson et al. teach that openings in a blood filter should be so spaced in order to optimize the filtering process (col. 13, lines 18-27). It would have been obvious to make the openings of the Kaganov et al. filter non-uniformly spaced so that it too would have this advantage.

Applicant's arguments filed August 1, 2005 have been fully considered but they are not persuasive for the reasons set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael

Art Unit: 3731

Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

mht
8/10/05



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731